

SPEECH

OF

MR. JOHNSON OF ARKANSAS,

IN THE

C. S. SENATE, FEBRUARY 9th, 1864,

ON

THE BILL TO LIMIT AND DEFINE

THE

TERMS OF OFFICE

OF THE

PRINCIPAL OFFICERS OR HEADS OF DEPARTMENTS.

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SPEECH.

MR. PRESIDENT :

The bill under consideration proposes to enact—

“That the term of office of the secretary or principal officer of each one of the several executive departments, shall be for the same period of time as that of a member of the house of representatives, and shall expire at the end of each congress of the Confederate States; but that the same officer may be renominated, and shall be competent, if confirmed, to occupy and to enjoy the rights and to discharge the duties of said office for any number of terms.”

There are those in the legislative and in the executive departments of our government, whose opinions are justly entitled to great weight, who contend that this bill is contrary to the constitution, and who avow “the spirit of the constitution” as the rule of construction, by which they attain this conclusion, though that instrument is itself silent. If this be a sound and safe rule of construction, it remains for examination to determine whether, in this instance, it is well and justly applied.

The bill limits the term of office of a secretary to two years, and this limitation involves a new appointment or a renomination, which in its constitutional course must be submitted to the senate, where it may be confirmed or rejected. This renomination, it is objected, creates an accountability on the part of the secretary biennially to the senate, which is a part of the legislative branch of the government; and thus is infringed, by a co-ordinate branch of government, the control of the president over his cabinet officers. To say that an accountability is thus created is not strictly correct. The officer renominated is not required to render an account of his acts; no penalty is inflicted or proposed to be inflicted upon him. When his term has expired, he is out of office. The action of the senate has no relation to the past. It relates exclusively to the fitness and qualifications of the nominee for the duties of the office in future; and if the conduct and action of the officer during a previous term is referred to by the senate, it is not by way of inflicting any penalty, but it is referred to simply as the best means to form their own judgment, so that they may discharge wisely their own duty in regard to confirmation or rejection, and to this no objection can well be taken.

That the limitation of office infringes the control of the president over his cabinet officer, where that control is sought to be exercised for any laudable or patriotic purpose, is not well founded. If the control

is for purposes of usurpation, or is otherwise pernicious, destructive or criminal, then all will agree that to that extent this control ought to be abridged; and any action producing that effect, we may feel assured, no one will contend is an infringement, such as is embraced in the "spirit" of the objection. To contend for a corrupt executive control by the "spirit of the constitution," would pervert the constitutional intent and would betray the spirit of the paid advocate employed by a criminal at the bar, and not the candid debater and statesman, who seeks for truth and prefers it to a meretricious victory. If the control is for a meritorious purpose, the president's power is ample to compel concurrence or to remove the officer.

That this limitation can produce no other infringement of control, and that it is not prohibited by the constitution, I cite as proofs the words of the instrument itself, which declares in article 2, section 2, paragraph 3, that

"The principal officer in each of the executive departments, and all persons connected with the diplomatic service, may be removed from office at the pleasure of the president." It will be seen by this that the right of removal, which is the means of control by the president, is not invaded. He can remove "*at pleasure*" the officer for two years as well as the officer for life. The control is perfect for all laudable purposes, and may be exercised daily and new officers appointed. The secretary knows he is subject to it at any hour and for any cause, not even excepting whim and caprice. For all wholesome purposes the control is even increased, for by force of the expiration of the term of office, the president is compelled periodically, even though not so inclined, to pass his judgment upon the officer, and the officer must ever look upon *renomination* as necessary by the president, before reconfirmation by the senate can come in question; and will ever feel that removal is imminent, that he is specially subject to the president whilst a denial of confirmation by the senate is remote and is *dependent*: first, upon the *expiration* of the term of service; and second, upon the *will* of the president to *renominate*; and thirdly, upon the authority of the president, the strength of his party, the merit of the officer, and other causes tending to influence the mind of the senate, and to render uncertain any adverse decision.

It is not to be presumed that the senate will act factiously upon cabinet nominations. Experience of seventy years has not shown it to be so. Mr. Hamilton says, speaking of the act of rejection by the senate: "It can only be to make place for another nomination by himself, (the president.) The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not probable that his nomination would often be overruled. The senate could not be tempted, by the preference they might feel to another, to reject the one proposed. They could not assure themselves that the person they might wish would be brought forward by a second or any subsequent nomination. They could not be certain that a future nomination would present a candidate in any degree more acceptable to them, and as their dissent might cast a kind of stigma upon the individual rejected, and might seem to reflect upon the judgment of the president;

it is not likely their sanction would often be refused when there were not special and strong reasons for the refusal."

Yet further in speaking of that power of the senate to confirm and reject a nomination, Mr. Hamilton remarks, that "it would have a powerful though in general a silent operation. It would be an excellent check upon a spirit of favoritism in the president, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachment, or from a view to popularity."

The "*powerful though in general silent*" influence referred to, would relate not only to the increased solicitude and thoughtful care of the president in the selection of his officers, it would operate effectively upon their energy and devotion to their duties when in office, and to their solicitude to discharge those duties satisfactorily, which constitutes the strength of a popular government, and to abate all gratuitous rudeness, discourtesy or insulting exhibition of authority, which goes so far to render a people unhappy and to cripple even the wisest and ablest administration. Indeed, the arrogant, inflated, conceited, tyrannical and unnecessarily insulting demeanor of our officers, civil as well as military, humiliating and breaking the pride and spirit of our people, is *universally remarked*. It is the *evil* of our day, and it exists in all executive circles, even in the first circle of chief officers around the president. The only remedy for it, of reasonable efficacy and of expanded influence, is the example of those higher circles. To secure the heaven-born example of patient courtesy from the highest functionaries, limit the certainty of their power.

Under the old constitution, the apprehension of the *federal* statesmen was that the *legislative* would encroach upon the *executive* branch of the government. It was not so however with the *states' rights* party: they feared encroachment by the executive. Mr. Hamilton preferred a president for life. His theory was overthrown in the convention. He then defended the constitution as he found it, except that in accordance with his original theory, fearing always a *legislative* encroachment, he and his party spared no opportunity to denounce the danger of it, and availed themselves of all means and at every occasion, whether by the enactment of measures, or by rules of construction upon uncertain or doubtful clauses of the constitution of general significance, to fortify the *executive* power and to strengthen the *executive* arm. These facts furnish an important mean to the interpretation and proper estimate of his views.

It is somewhat strange now, to look over the list of *states' rights* men in and out of congress, who join that party and who entertain the same suspicions of encroachment by the *legislative* upon the *executive* branch of government, who adopt the policy, if they do not take their inspiration from Alexander Hamilton, and who adopt the freedom of his rules of construction to achieve their unfortunate policy, and that too when the features of the two governments are so widely different that it may be regarded as questionable to say the least, whether Mr. Hamilton, an honest and conscientious statesman, if he were now here, would not himself, as a lover of the liberty secured by representative

government, have repudiated his positions in the case of the United States and contended for additional guards against the executive, now so greatly strengthened and in favor of the legislative, now so seriously weakened, in fact, as well as relatively. I will not compliment the distinguished apostles of Jefferson and Calhoun for this startling departure in this hour of darkness, and I cannot confide in and cannot follow them, though their pathway be illuminated by a great northern light. Neither ought they to suppose that the great alterations which have been made in our constitution will pass unobserved by our people, nor that the votes and opinions, in which they indulge, are free from responsibility, nor that these questions will not ultimately be presented and submitted to the great liberty loving and conservative democratic heart of the southern states. I will trust that I shall be able to show, in the course of these remarks, that the careful and well tested balance heretofore existing between these co-ordinate and coequal branches of the government has been seriously disturbed and endangered; though by no means so well could I accomplish it as these same eloquent and able apostles, could they emancipate their minds from a most singular bewilderment as it plainly appears to my humble comprehension.

That any accountability for a mal-administration is created by this bill, is denied; that any interruption to the power of the president over his ministers, to dismiss all that are refractory, and to surround again his council board, as often as he pleases, with such only as are of his own selection, is wholly untrue; or that any influence is established inimical to the proper and useful control designed to be secured to the president, or that is calculated to override the wise object of the constitution, which is to secure to the people the best possible administration, is without just and substantial foundation.

One proposition, illustrating and expounding the operation of the bill before us, is self-evident. It declares that a corrupt, tyrannical or incompetent minister, or a great and unscrupulous ambitious statesman, shall not be armed with great powers, and inaugurated with high office and *hold it for life*. Those who oppose this bill would fasten this result, so repugnant to the first principles of free government, upon our constitution.

If there is any rule in government, which the freedom of man inexorable exacts, and which has been canonized by every philosopher, and consecrated in every written code or constitution by every eminent law-giver, it is that every office, which is the exponent, or is likely to become such, of real power, shall be *limited* and *restricted* in *duration* and *extent*.

If this bill establishes any control in the co-ordinate legislative branch, it is subordinate wholly to that of the president, and can only be with justice defined as being a *healthy influence*. It proposes only a negative, and fixes only a limit of time beyond which, what the public may condemn as incompetency, may cease to idiotize in office to the detriment of a nation, and tyranny and encroachment may cease to trample upon the laws, and haughtily to float in the faces of the people their inflated official robes. Already, in the brief period of our national existence, we have had in some instances, in public judgment, too little

capacity for the public good, with too much of conceit, insult and annoyance for patient public endurance, united in all likelihood, as is natural to such qualities, with a determined love for office and power, which could alone be reached and cured by the rigid force of public law.

If the limitation upon the duration of a cabinet officer, as proposed in this bill, does violence to the spirit of the constitution, then no limitation can be imposed by law upon any other of the executive officers. The constitution is *silent* as to the duration of office of all appointees of the president. In paragraph 2 of section 2 of article 2, the constitution ordains that the president "shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors and other public ministers, &c., &c., and all other officers of the Confederate States, whose appointments are not herein otherwise provided for, and *which shall be established by law*;" and in paragraph 3 of section 2 article 2, it is declared that "the principal officers in each of the executive departments, &c., may be *removed* from office at the *pleasure* of the president. All other civil officers of the executive departments may be *removed at any time* by the president," &c., for certain causes.

The power is given to establish the offices of secretary of state, treasury, war, &c., and the full power to affix and define all the duties and elements requisite or usual, which enter into or constitute an office, (and of which the length of term is one,) without other reservation or limitation than the power of removal by the president. The constitution does not say that the secretary or other civil officers of the executive department shall *HOLD OFFICE* at the pleasure of the president; but it does say that the secretaries "may be removed at the pleasure," and all others "at any time." To be removed "at pleasure" and to be removed "at any time" is the same thing; and it seems a fair inference if the legislative power establishing both classes cannot affix the constituent of *duration* in one class, then it cannot in the other, and as the constitution is silent except for removal, no limitation is lawful.

It may be argued in the case of the class of officers to be removed "at any time," that the causes for the removal of that class have been prescribed as "for incapacity, inefficiency," &c., and that a material distinction is thus declared between them and that class which is removable "at pleasure." This is certainly true in some particulars, and it may not be improperly inferred from the specification of causes of removal in one class, that it is made the duty of the president to remove that class whenever such causes exist; and it may be plausibly inferred in those cases removable "at pleasure" and without cause, that the question of removal is optional, however incapable or inefficient. Now, whether such retention in office be the result of misjudgment or other cause, if incapacity or inefficiency do really exist, it is not the less unauthorized and deplorable. But to infer as a distinction, that because in the one class of officers the authority to remove *requires a cause* for its exercise, and is thus made a duty, that it is different from the other class and may be limited by congress; whilst in the other class, which is removable *at pleasure* and requires no cause, it is therefore sanctified and consecrated to executive control, even to abuse, and is exalted above the power of legislative limitation, would not seem to be logical or

plausible. The natural conclusion must be that the legislature, which was specially empowered to create and establish both classes of offices, can attach to each a restricted duration; otherwise, our system is one of office for life, of irresponsibility, and of a thousand despicable, egotistical tyrants, distributed through all the departments.

The questions involved are of a consequence neither minor nor transient—they are concurrent and coexistent with this government.

The able and invaluable report of the judiciary committee by the chairman, (Mr. Semmes,) though too studiously condensed and too severely retrenched, is filled with evidences of thorough research and industrious examination, and has brought to light many facts and much of the constitutional learning so difficult to attain by the ordinary student. He has discussed the subject with enlarged views, as well as a close logical reasoning, well calculated to remove all doubts from his theory of the power and true intent of the constitution. Previous to the presentation of that report, I awaited, I confess, with some anxiety and perhaps apprehension, the results of discussion, knowing as I did, the assured positiveness of the opponents of the bill upon constitutional grounds. I am now satisfied, from the facts and history, precedents and early opinions, constituting special learning in this connection, and by the admirable argument of the senator, that there is no just foundation of constitutional objection; and if I am now engaged in continuing this discussion, it is not that I feel it to be essential, but as the author of the measure, I feel it to be my duty, however unwelcome the labor or unpleasant the task.

If the opponents of the measure, who have resisted it so promptly and confidently, are unable to demonstrate, even to palpability, their constitutional moorings, they must abandon the contest. They are patriots and republicans, and surely will not attempt to fasten upon us, from any obligation less imposing than the constitution, a system so odious to freemen as that by which all offices are to be held *for life* and at the *pleasure* of all future chief magistrates.

If it be so determined, then we have made a fearful step backwards, and it involves another revolution, which I do not hesitate to predict. Neither can I believe that this act, after the constitutional objection is given up, will be resisted by congress or the executive, on the ground that the doctrine of life office is expedient even as to the heads of departments.

Our affairs are the subject of too much anxious thought to hesitate to speak the whole truth. Public confidence in the cabinet of the president is shaken, and with many it is lost. The whole burden of this administration rests on the president. Persistently now the public turns to him; the expression is common that some of the cabinet are incapable for more than mere clerks, and such is their proper sphere for need of judgment, foresight, and practical sense. The situation is one of evil promise and of public anxiety, and it is proper that it be discussed. Upon the president alone rests the whole weight of this administration, and through him exists the bond of confidence with the people; and unsupported as he is, the public strictures, censure and reproach are passing by the incompetent subordinates, where they are properly due, to be thrown in

magazine at his doors. His strength among both the people and the army is essential to our success. Yet we all know that these things are undermining his strength, and we cannot in discharging our duty honestly, hesitate to say them to him; nor do I feel apprehensive or doubt that he has that magnanimity of soul which can prefer a candid opinion, however unwelcome, if candidly and courteously, and not malevolently expressed.

The difficulty with the cabinet demands a remedy; it is great in its influence and easily remedied. If they or any of them have lost the confidence of the public, they ought to be subjected to some further test. It cannot be, if rejected, that there are none others capable of their places. If so subjected, those will be rejected only who ought to be. But let them all be reconfirmed, at which I should not be surprised, and it is not to be denied that such action will show to the public the *continued confidence* of the senate, who have the best of all opportunities to judge fully and wisely, and it will greatly stimulate them and strengthen the government and confirm the public confidence.

This appeal to the "spirit of the constitution" is intended to defeat the pending bill, and is to guarantee the inviolability of the cabinet officers—the highest officers in government next to the president; and after having enthralled them and declared them to be mere "*tenants at will*," to confer upon them by decision of the whole congress, office for life and immunity from all liability to lose it, by incompetency, dishonesty, usurpation or other cause, except the whim or judgment of a partial master.

It is fashionable whilst defending this class, to depreciate their power and importance. Nothing can be more mistaken or unjust. They are now far more powerful than judges, senators or congressmen. In the government of the United States, by George Washington's rules and etiquette, they took precedence below the senate; the extent of power, the duration of office, the amount of salary, and the avidity with which the position is sought by the eminent talent of the country, enter intimately into the title to rank and precedence. The rank was so decided. But now in our government it has become a matter of serious doubt. Our president holds for six years—our ministers *for life*, and they are authorized to be admitted to the *floors of congress with full voice in debate*. I see them now, six in number, entering the senate with formal air and ceremonious reserve, followed by their clerks with the official portfolio, great rolls of records and red tape, and seating themselves in selected seats specially provided, with their high salaried attendants by their sides, and I see flitting around them an obsequious majority of the senate; and I see a senate subjugated and lost to its high place in the government of the country.

After this conjunction of departments in the constitutional programme; this official hybridity, there will be no question of precedence to be justly entertained. The cabinet "*LIFE OLIGARCHY*" must rank next to the president. The union of the executive with the legislative departments in the constitution, seems clearly designed, though not happily, to reduce this government to the English system, and it is justly to be feared that it has been overdone. The judiciary may have to protect

the public rights, whilst the house of representatives, not only unaided, but actually embarrassed by a stupified and subjugated senate, may have to rescue public liberty from a system far more despotic than the English. There, the house of commons can turn out a ministry; but here, NEVER!

The spirit of the constitution is invoked to confer office for life—upon whom? Upon the highest class of officers known to the government.

The secretaries have power, and a vast deal of it, legal and lawless. They have far more than a judge or a member of the house or senate. Their offices are sought for with avidity; they are the high objects of the ambition of our most eminent orators, legislators and statesmen. They command the highest class of able statesmen and sharp-sighted politicians.

It is not proper to invoke a spirit from the charter of liberty, to establish office for life upon this great and dangerous class of pensioners "*at the will of the president.*" They will soon become too strong for subordination to law and the security of personal rights. It is impossible the president can desire a system which will defeat his high objects and damn his great labors.

The report of the committee, pp. 5 and 6, establishes in this connection an invaluable fact, to wit: "that the insertion of the removal clause in our constitution, (par. 3, sec. 2, art. 2,) was intended to settle a grave constitutional dispute as to the power of the president to *remove* an executive officer without the concurrence of the senate, as well as to *restrain* him in the exercise of that power as to all the civil officers," except the heads of departments and the diplomatic corps. But for this explanation it might be inferred and would be argued, that the true intent of the removal clause was not only to give to the president the power of removal "*at pleasure*" and "*at any time,*" but also to establish a personal control over all classes of his appointees so complete, as that it should interdict to congress the right to limit the duration of an executive officer.

If such exclusive control had been designed, it would have been declared, and would not have been left to interpretation and inference. By that clause the executive power of removal is placed beyond dispute, but the legislative power to establish a term of years, as the official term was not destroyed. The report of the committee has well remarked, that "to create an office and to regulate its tenure is an exercise of *legislative* power; to remove an officer is an *executive* act."

It may be justly added, that the first and paramount "spirit of the constitution" is that of limitation upon powers otherwise absolute in character and unrestricted in duration.

The president shall be thirty-five years old, and can hold office but for six years, and is not re-eligible. He is subjected to a number of other conditions.

The vice-president may become president, and would seem to be subject to all the same restrictions and conditions.

The judges of the confederate courts are limited to "good behavior" as the official term.

The senator shall be a citizen, shall be not less than thirty years old, and his official term is six years.

The representative shall be a citizen, not less than twenty-five years old, and his official term is two years.

Upon other officers there is no limitation ; but it is to be remarked that the constitution, whilst it authorizes, does not create any other office. No other officers have existence, except at the discretion and by the creation of the legislative power, and the legislative power is endowed with all authority in clause 18, sec. 8, art. 1, and in clause 2, sec. 2, art. 2, to create and establish the offices to be enjoyed, and is invested with full and complete power, since no limit is prescribed, over the duties, attributes and constituent features of such officers. There is in fact no office created by the constitution, whose duty and powers are essential to the system, and are defined, and whose existence is independent of the legislative will, to which the constitution has not affixed a specific duration with the exception of the judiciary, and in that case the exception is expressly declared and is for manifest reasons. From these facts, if it be not allowable to say, that the "spirit of the constitution" requires that the duration of high offices shall be limited, it is at least conclusive that the spirit of the constitution interposes no obstacle to limitation, but leaves the question as one of policy to be determined by the law making power.

Upon the conduct, management and business of this war alone, this measure is of incalculable consequence in the new spirit and vigor it will impart generally to the public service, whether it result in immediate change of any of its officers or not. But there is ground to apprehend that through all our future, the steady efficiency of the government itself is involved, and that its powers and machinery have been distured and lost balance through the instrumentality of constitutional innovations, and that the tranquility of the country and happiness of the people may be dependent for a check or guard upon this or some kindred measure. Our constitution is not the same with that to which we have been so long accustomed. It is believed to be far better ; but it is certainly widely different, and to that extent is an experiment demanding thoughtful observation and carefully guarded administration. The views here submitted upon those changes and amendments in our constitution, are submitted with all humility, believing they may have at least the merit of suggestiveness. That I have given any thought at this time to these very serious questions and have risked its expression, is the result of a determined will to remove as far as possible all obstacles, and to enlist every power and every auspicious influence to the promotion of our speedy triumph.

To this end it is believed that this measure is essential in order that we may bring fresh energies, new thoughts and the highest efficiency to the administration of any one of these departments, in which if we have them not already, all must admit they are now of incalculable importance.

But as the opponents of this policy have seemed to rely almost entirely on constitutional obstacles, (thus abandoning most unjustly for some of the secretaries all claim to any superior efficiency of departmental administration,) the friends of the measure are driven to the consideration of those obstacles, and the constitution itself, rather than to

that great immediate expediency which is enforced by the present emergency.

The consideration, therefore, of the new and unsettled features of the constitution, and their effects taken severally and collectively upon our government, is wholly unavoidable; not, however, that more than a sketch is now pretended. Yet, in the course of it, a strong conviction will arise with many, that there exists danger that our system of the distribution of powers has been unbalanced and that guards are needed to be furnished from legislation to preserve the integrity of the government.

By some it is not believed that the convention which framed this constitution, fully appreciated at the time the vast magnitude of the changes made by them upon the old constitution, which had successfully withstood faction and fanaticism, and preserved its machinery, form, shape and system over seventy years, or they would have thrown around those innovations, by express provisions, additional guards.

The intent of the convention is apparent from its work. It was to strike out an intermediate system of a government between those of England and the United States—avoiding the monarchy and titled aristocracy of the first, and the frequent recurring elections, factious convulsions and restless instability of the last. The danger now is, not that we shall fall into either of those systems, but into one that has vices from which both the others have escaped, and under which we may be most disastrously entrapped.

In the meanwhile, to preserve the constitution in its essential guarantees of popular government until peace gives opportunity for a reform, is a paramount object; and to this end it is not to be forgotten, that as this government shall have asserted either its *powers* or *prerogatives* and have been trained to its work by the present executive, so is it likely to continue in the hands of his successors, of whom we cannot always expect the same unbounded patriotism or even the same self-denial and forbearance in its administration, as we can from him whose glory it more especially is to be its author and ruling spirit.

His fame and influence hereafter must be counted and considered. The birth of this republic, in the midst of the mighty throes which have convulsed the continent and distressed a world, bounding at a leap across dangers so fearful, full armed into the arena of nations, the unconquerable competitor, if not the equal of the greatest of the family—the creation of a great and independent nationality, in the face of such a war, and in despite of the great wrongs of a treacherous and pusillanimous neutrality on the part of an unfriendly world—the character of the government itself—the prosperity, happiness and greatness of its people—all will go to establish the rank of Jefferson Davis amongst the most remarkable and renowned men of any age. Immaterial whether all think he deserve it or not: no man of sense, after calmly reflecting, will deny it. The overflowing confidence and affection of this people will attend him through life. This will be the natural reward of great and patriotic labors and painful responsibilities. Success will perfect his title, and it will be sound and enduring. He alone can abridge or enlarge this award of posterity, by his wisdom and statesmanship, or by the reverse.

His influence, then, upon the opinions of our people, and upon the nature and machinery as well as policy of our government, will be almost certain to predominate. These facts he must recognize; they redouble his responsibilities, and require of him the wisdom of a great statesman and self-denial of a great philosopher. As his co-laborers, we are forced to recollect that his practice hereafter is to constitute precedent—his dictum, decision—his naked word is to assume the force of solemn warrant. Errors originated, tolerated or cherished by him, will fuse and consolidate in our system. Let us then be warned and observant.

Every guard ought to be secured during his term that is essential. No one more readily than he will recognize these truths, and, as I believe, sympathize with them.

After his term, no cardinal organic change even to abridge executive license and impunity will be allowed by his successors, but through the ordinary channel of violent party conflict; and to this obstacle to reform is to be superadded that of a concurrence in such reform on the part of our exaggerated state sovereignties. These state sovereignties are new and untried instruments of stubborn power. I look upon them in this connection with great apprehension. When they shall be invoked in conflict upon constitutional questions and a president shall head the *federal party* in opposition to popular or states' rights element, which is almost inevitable, it will rack this Confederacy sorely.

But far more ominous is it of our disaster when these sovereignties shall have become usual *elements* in our ordinary political conflicts; and it is idle to hope that ambitious men will not lead them into it.

By the innovations in our constitution, the presidential office has been greatly elevated.

To appoint each successor is to become an object of fearful struggle between the INCUMBENT, the state SOVEREIGNTIES and geographical SECTIONS it is to be feared.

But the Office will certainly increase in dignity and splendor with its growth in power and duration, and with the freedom of the subordinates from the checks and restrictions of law.

The government will assuredly shake off its respect for public interest and popular opinion to the extent that it has been shorn of the hopes of further promotion, and relieved of that dependence upon the people involved in a re-election, whilst it is likely to be only the more resolved to appoint its own successor. I will not say that the presidential office has outgrown our system; but I will say of our future history, that every occupant after Jefferson Davis, will feel this growth and reflect it, in the style, the manners and the ceremonies of the court, and ultimately in the improvident and reckless administration of the government.

One proposition would seem to be plain, to wit: that it will not do to surround this presidential office, as now constituted, with a cabinet composing an OLIGARCHY of the six most powerful officers of government, who shall be attached as mere dependants, commissioned for life, *removable "at pleasure,"* with or without cause, and subjected to no check, limitation or accountability, other than the judgment, the passion, the

ambition or corruption of any and every man who may hereafter chance to be elected to the office of president.

Heretofore our people have been accustomed to a plain style of living; to republican manners, and the unassuming simplicity of fraternity and equality. But hereafter, if no guard, or check, or accountability shall be interposed, the cabinet will become the government in fact, the presidential court will become one of ceremony, extravagance, and regal grandeur, and the lesser lights and satellites will rival that court in ostentation, expenditure and pretension, until finally their folly shall corrupt public manners, threaten our political rights, and force the states to reform the system.

The picture is an unpleasant one; but I feel no fear of injury to our great cause, whether present or future, from this discussion. The subject, thank God, whilst this president lasts, is yet within our control, and I hope and trust not only congress, but the guardians and thoughtful men of our state governments will take up and consider the remedies in due time, even to the extent of reforming the constitution in convention.

Our constitution enlarges the duration of the official term of a president to *six years*, and limits the eligibility to *one term*.

The United States' constitution restricts the official term to four years, and allows without limit his re-eligibility. He may be *re-elected any number of terms*.

By our constitution, when once installed, our president has attained the summit of honor—he has filled the measure of his glory. He can indulge no further legitimate ambition of place and power. He has nothing more to ask for or to hope. His ambition is fired—it is not quenched. He becomes independent of popular opinion; he may tread it under foot as he pleases, (and we all know the frailty of man;) he may labor hard and patriotically, or selfishly, or perfidiously in the administration of the government, or he may turn it over to his prime minister and devote himself to a life of luxury and enjoyment, or to the pageantry, magnificence, extravagance and ceremonial of a great court. It is a most inviting style of life both to the gentlemen and the ladies, and it lasts for all of six years. How long will it be before some president will adopt all this ease, style and dignity, and, like other potentates, conduct his government by his prime minister and his principal officers of executive departments? Why should the president not do so? Our system invites him to repose. He is wholly independent. He has labored a life-time to win the prize; why encounter six more long years of increased trouble and perplexity? He is cut off from re-election. He is independent of the love and the hatred of the people. Why not enjoy it? And when once this example is set, our political institutions will have undergone a radical change.

He who does not perceive that this is a possible and even probable result of the innovation *upon the presidential tenure*, has a credulous nature or a shallow knowledge of human kind. The forecast would suggest timely guards.

Not to consume time, I will barely refer to what must be familiar, by

way of illustration, as showing the tendency of power to imperial rules, princely forms, and courtly style and manners. I will but refer to our days of purest men and patriots—to the period of the administrations of George Washington and John Adams—times when we would least expect it. The style of those courts was repugnant to the people, and their tendency more and more to forms, style and assumptions monarchical, until the opposition and elevation of Mr. Jefferson annihilated the whole courtly fabric, and established a republican simplicity which prevails to the present day. But this occurred when the purest patriots governed and the purest politicians lived, and when the president could hold but for four years, and when he was capable of *re-election* for any number of terms, and actually desired the re-election, and was thus all the while *responsible* to the love or hatred of the people, and dependent on their voice of praise or censure—*dependent* on their votes. It cannot be difficult to foresee the difference in results, now that we have a ruler for six years, instead of four, incapable of re-election, disconnected and wholly independent of the people.

When the first president shall have thrown from his shoulders the cares of state, it will be upon one or two of his favorite secretaries, and this will then be a different system of government. The results will probably be satisfactory *at first*. The vices of a system rarely ever appear at the hands of its authors—rarely ever develop at the outset.

But it may be safely concluded, that with rare exceptions, every president elected *afterwards* will accept the office, regarding it as a *settled* feature, that it is his right to labor at the duties of government when and as much or as little as he may please, and to assign such part of them, or all, as he may determine, to whomsoever may be his favorite secretary or head of a department. The government will then change. The people will elect the president, who will elect the ruler, and the ruler will be independent of the people, and of all other branches of government, and for life, if congress wills it.

That such a transfer or assignment of the duties and the powers of administration is to be the result, there are many other reasons and causes naturally arising under the particular innovation now under consideration, to which time, and perhaps your patience, will not allow present reference; but a reference must be had to a few of the more prominent, and particularly to those causes and influences, the result of other innovations bearing upon the postulate of the *transfer* by the president of the *duties of administration* to cabinet officers, which, it is believed, will be decisive in their effect to bring out that result.

Not only have we the extension of the presidential term to *six years*—the *inhibition of re-eligibility* after that term—the latitudinarian construction of the constitution to the effect that the *duration* of the *tenure* of cabinet executive officers shall not be prescribed by congress—and its corollary that the *duration* of the tenure of all the subordinate executive officers is placed beyond legislative limitation—and its true, but secondary result, the hidden meaning, to wit: that in the hands of the president rests the *appointing power* to all executive officers, and the power of removal *at pleasure*, to wit: of *perpetuation in office at pleasure* and *for life*, since there is to be no other legitimate method of

limiting the duration, thus rendering him the fountain of all office, and if he be an ambitious and corrupt man, thus rendering subservient to him and his designs, whatever they may be, the whole, or as many as he may wish to use of the entire official corps, civil and military, of the Confederacy. Not only have we all this in the enlargement of the executive power, but, as if it were not enough, we have still another innovation of overwhelming magnitude, provided in the 2d clause of the 6th section of the 1st article, where it is declared that "congress may by law grant to the principal officer in each of the executive departments a seat upon the floor of either house of congress, with the privilege of discussing any measures appertaining to his department."

These ministers have not yet taken their seats in congress. But every man of common sense *knows* that the time must and will come when they *will* take their seats on *both* floors of congress. Many causes will serve to produce it—the personal supremacy of some great orator—the great wisdom of some profound statesman, or public benefactor—high party excitement still more likely—love of change—spirit of experimentalism—even a legislative freak—many motives, causes, influences and casualties can, and some *will concur*, to seat first upon one and then both floors of congress the whole executive cabinet corps.

To any one familiar with, and experienced in legislative proceedings, the stupendous power of this provision to control, direct and shape legislation is evident at once. To make it manifest in its vast and almost incalculable proportions and influences, is a task worthy of the pen of Madison, Hamilton or Jefferson, and is impossible to one of less capacity. I shall therefore be content if I can only effect a faint conception; I could not hope to do more.

I am aware of the ruling argument in its favor, I believe; but I will leave to its friends to state it. It is plausible, and under some circumstances it would enable a legislative body, if filled with men of such transcendent powers and rigorous nature and dominating character as Mr. Clay, Mr. Benton, Mr. Calhoun, and perhaps only a few more who have lived in our history, to crush or to purify a corrupt administration. But such men are rare, and even they could not triumph if confronted with their equals in the elements of state craft and personal ascendancy.

It is the Trojan horse; the outer wall established in the old constitution was torn down by the Montgomery convention, and it only remains for congress, in some thoughtless mood of unguarded confidence or credulity, to introduce it in the city; it is filled with armed men; the city will be betrayed, its gates thrown open, and congress, the citadel of liberty and popular good government, may fall beneath the false and perfidious legislation which will be planned by the ambitious and corrupt, and enacted under the influence of eloquence over the weak, threats on the timid, bribes to the corrupt, and the unnumbered agencies which personal association and a seat in the same legislative body will always confer upon the man who holds the great executive powers, augmented by personal ascendancy and greater intellect. The judiciary can be crippled by legislation; the congress can be made subservient—can prostitute its powers, or indirectly destroy them; the executive can be invested with every power requisite to tyranny and ambition, and all

without violating a letter of the constitution. Those who make, or construe, or execute the laws, and who have reasonable experience in legislative and executive political life, know how easy of accomplishment are these propositions.

The experience of several thousand years, during which we are furnished by history with somewhat of the efforts and experiments by all nations, upon all classes of government, all serve but to show that republics have been the least stable, and that if there be any one system of liberty and self-government capable of permanent success, it is that which is based upon a guarded system of representation and a practical distinct subdivision and separation of the powers, executive, legislative and judicial. Yet our constitution has jumbled together the executive and legislative departments. If it shall be allowed to be consummated, I do not hesitate to assert, that it will prove in our system, which is so different from that of the English, to which alone is reference made to justify the innovation, it will prove to be a deadly blow at the equality, the purity, and the independence of the legislative department.

This innovation has not yet seated the Executive upon the floors of the Senate and House, where he is authorized to use official, social and personal influences, to utter his persuasions, or to denounce his fiat; but it has proposed to place his reserve corps upon their sacred floors, the six highest executive officers of government, his instruments holding at pleasure, to represent him and "to do his pleasure;" agents far more able and effective certainly upon this theatre, than he would be, and selected with that view.

This innovation has created an OLIGARCHY, and hedged around with them a master, and not the people's president. The system gives us an OLIGARCHY'S president, and a PRESIDENT'S oligarchy. I feel myself on the highway to humiliation, whenever my duty forces me to call on one oligarch. Though to do justice by the system of oligarchs, I feel myself honored and proud of the respect and friendship of some other "oligarchs;" for to be an "oligarch" is not essentially to cease to be a faithful officer and a courteous, proper gentleman.

This innovation has created a corps of official hybrids—neither executive nor legislative—but both. Official hybridity and hybridous oligarchy, and oligarchal democracy: it is a rare, representative, republican, constitutional spawning. There is a genius in the conception; there is originality in or about the cabinet institution, or there was about the constitutional profundity of hatching; so anomalous and vigorous the hybridous, long-lived constitutions of this extreme oligarchical circle.

I did not expect this brood to be declared by old state's rights republicans of any party, under any rule of construction, to be a *life office* OLIGARCHY. It must greatly elevate the dignity, power and seductiveness of the commission. A leadership in congress few men would exchange for the silent though ever so inflated honors of a cabinet. But as if to furnish the "il habet," the last blow to congress, a cabinet post is made by this mongrel feature to *insure a membership* and a *leadership* not in one but in both houses of congress, in addition to all the other great powers and distinctions, and that, too, *for life*, if the OLIGARCHY and their life office subordinates, their official tools, can only elect the

successive presidents. This will enable every president, always, with honorable bid, to enlist in the cabinet council, and to recruit from the halls of senate and house all the evident individual ascendancy that is developed in either, and that might otherwise prefer patriotic opposition to official subserviency.

But I am warned by the length of this address that it is proper to conclude.

I cannot do so however without stating that there are other most material considerations I would desire to present, and yet I presume they will be better presented by others; and particularly the enquiry as to the character and extent and explicitness of the *confirmation* of these cabinet officers, and the proper language of their commissions in obedience thereto. It is a matter of just enquiry now.

But above all, I regret that I cannot now, though I may hereafter take occasion, to enter the broad field of the immediate expediency of this measure. Exclusive of the fact, that the administration of the government can never leave the president and go into the hands of unelected and irresponsible departmental officers, if this bill is enacted, besides other great and most weighty considerations, which I am not now able to sum up, in connection with the justice, wisdom and purity of government. Yet all may safely conclude, that if the offices of the ministry shall *periodically expire*, it will at least result in that, which of all others is by far the most desirable at present, in constant and faithful labor in office, and in the utmost energy and efficiency.

In conclusion, I may say that I have seen indications of a disposition to regard this measure as a party movement, and perhaps extending so far even as to indicate a disposition on the part of its opponents to force it to that result. If this be so, I say nothing yet as to what would seem to be the prompting motive; but I will say, that so far as I am concerned, such suspicion, if really entertained, is unfounded; and any such charge, if really made, is *false*. I regard these innovations on the presidential tenure, and the cabinet institution, as now construed in and under our constitution, as being defective and the weakest part of our system; and I do not believe that all the powers and talent of this cabinet are faithfully exerted, nor that the essential spur is yet applied to force it.

But as to this being an opposition party movement, whilst I cannot be a follower of any cabinet officer, or other subordinate, that I believe either unfit or incompetent, I am free to say that I desired and sought frankly to converse with the president beforehand on this matter, but had to give it up, and trust to his sound and discriminating judgment to read me and my motives truly: and also to say, that whilst this war lasts, it is not possible I can be driven to sympathize with any party opposition organization.

With President Davis, the salvation of the country and the establishment of a durable and efficient republican government, I am satisfied, is the one all engrossing and superlative desire. The motive is the same with many who are connected with him in their public duties, and they (myself of the number) may not always pursue that course, which would most entirely conform to what would be consistent either with

his judgment or feeling. And for one, I cannot, so long as my judgment shall be able, with reasonable strength of conviction to direct me, I will not, "seeing the right, still the wrong pursue."

